



The Board of Adjustment held a virtual meeting on Tuesday, February 8th, 2022, at 4 p.m. with the following being present:

GUEST: Ms. Linda, Donna Wiseman, Robert Timberlake, Ben Fisher, Ms. Bonnie, Ginger Fox, and Kvoros; Victor Wallace, Michael Fox, Alyssa Nelson, Eva Nelson, Carl Blankenship, Dionne Brown, Daniel Almazan, Tuggle Duggins, Nick Kirkland, Ken Miller, Lane,

PRESENT: John Struzick, Tim Norris, John Schaffer, Bill Burgin, Dennis Rogers, Jayne Land, Jon Post, and Liliana Spears

STAFF: Teresa Barringer, Elizabeth Burke, Graham Corriher, Hannah Jacobson, and Emily Vanek

WELCOME GUESTS AND VISITORS

John Schaffer, Chair, called the BOA meeting to order at 4:07 p.m. on 2/8/2022

APPROVAL OF MINUTES

BOA Minutes of December 14th, 2021 approved as submitted.

STAFF PRESENTATION

CASE NO. BOA-01-2022 619 Maupin Ave

Petitioner(s): Michael Mitchell, Owner

Parcel(s): 014 006

Current Zone: Historic Residential (HR)

Variance Request

Variance request to allow an 18 ft. x 18 ft. = 324 sq. ft. after-the-fact accessory structure to remain in the rear street yard. The minimum “rear” and “side” boundary setback requirement of 5 ft. for Historic Residential is met. The variance request is due to the site having two street yard boundaries.

Applicable Codes

LDO Sec 6.2.A.1:

Front Yard: A space extending the full width of the lot between the architectural front of the principle building façade (the front setback) and the front lot line or the fronting street right-of-way measured perpendicular to the building at the closest point to the front lot line. Typically this yard is required to remain open and unoccupied, with the exception of expressly-permitted

encroachments or structures. Corner lots comprise of two (2) or more front yards. Therefore, all applicable front yard provisions (including permissions and prohibitions) are required in both, or all, front yard areas.

LDO Section 4.2.D:

Double Frontage Lots: Double frontage lots should be avoided. However, on lots having frontage on two streets and not located on a corner, the minimum front yard shall be provided on each street in accordance with the provisions of this Ordinance. On lots having frontage on more than two streets, the minimum front yard shall be provided in accordance with the regulations set forth in this Ordinance on at least two of the street frontages. The minimum front yard on the remaining frontage may be reduced in accordance with the street side yard requirements of the district. When a double frontage lot has frontage along a Thoroughfare, access to the lot shall be via the non-thoroughfare frontage.

LDO Chapter 18: Double Frontage Lot

Also referred to as a "through lot", means a lot having frontage on two roads and having the right of access to both roads, but excluding corner lots.

LDO Section 6.5.C.1:

Accessory Structures (including but not limited to enclosed or non-enclosed storage structures, detached garages, and may include garden structures or garden features):

a. Location: Accessory structures shall be located only in side (interior side for corner lots) or rear yards; provided however, that open-walled garden structures (such as a gazebo, pergola, arbor, or trellis, but not including walled structures such as a greenhouse) may be located in the front or side yard when the distance from the principal structure to the right-of-way line is greater than 200 feet.

LDO Section 15.16:

The following are not causes for a variance:

- The citing of other nonconforming or conforming uses of land or structures in the same or other districts.
- The request for a particular use expressly, or by inference, prohibited in the district involved.
- Economic hardship or the fact that property may be utilized more profitably with a variance.

DISCUSSION

Ms. Land recused herself from the voting board members for BOA-01-2022. Ms. Barringer conducted a staff presentation introducing the details and purpose of the case. Mr. Schaffer opened the discussion for public comment and swore in each of the speakers.

Ms. Meyerhoeffer, located at 621 Maupin Ave, expressed her concerns regarding the structure in question including setbacks and the character of the community; requesting the variance to remain the same.

Ms. Fox, located at 623 Maupin Ave, shared pictures of the accessory structure in question and provided insight on the community's layout while expressing her opposition. Ms. Fox mentioned a noise concern related to the blacksmith hobby the accessory structure is being used for. She also expressed her concern of the structure's location, size, appearance, and structural soundness. Ms. Fox highlighted that when she bought her home, like others in their community, they were made aware of the site specific conditions including the double street yard and that the hardship was self-inflicted. Ms. Fox and the board discussed the community's petition and requested the variance not to be granted.

Mr. Schaffer reminded participants that BOA-01-2022 will be considered based on finding-of-facts and testimony, not opinions. He reiterated the purpose of the board's review was to determine if the proposal meets the Land Development Ordinance and City Code. Mrs. Barringer added that the only aspect being considered for the case is the location of the accessory structure. The aesthetic of the structure or how the structure was constructed cannot be regulated by the Land Development Ordinance or City Code by North Carolina General Statutes, unless in a historic district. She further provided the permitting process and mentioned that building code would be enforced through Rowan County.

The board and staff discussed the LDO's definition of front and how it applies to BOA-01-2022, which has a double frontage lot. The board further discussed the opportunity the homeowner had to be informed of the double lot frontage and the associated restriction which would not lead to an unnecessary hardship. Mr. Burgin inquired if citizens have a right to a backyard. Mr. Norris followed up with the question of how the LDO defines a backyard. The board and staff discussed the definitions of backyard, lot lines compared to right of way lines, and the diagram depicted in LDO chapter 6.2A.

The board and staff discussed previous cases with similar conditions, the outcomes, and how they vary from BOA-01-2022. The board continued to discuss what is considered an unnecessary hardships and the various applicable definitions. Mr. Norris, Ms. Spears, and Mr. Post stated that in this case, a double frontage yard meets both LDO definitions of a rear and front yard.

Required Findings & Conclusions of Law: The Board of Adjustment may only grant a variance having first held a public hearing on the matter and having made the following determinations:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Findings-of-Fact

- Ms. Spears stated that the case does not present an unnecessary hardship that would result from the strict application of the ordinance because the accessory structure is located in the rear yard by the LDO's definition and is allowed by right. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Second by Mr. Rogers. All voted aye but Mr. Burgin who voted nay.

Tim Norris (AYE), Dennis Rogers (AYE), John Schaffer (AYE), John Struzick (AYE), Jon Post (AYE), Dennis Rogers (AYE), Liliana Spears(AYE), Bill Burgin (NAY)

MOTION

Ms. Spears made a motion that the variance was not applicable to BOA-01-2022 case because the proposed use is permitted by right. Second by Mr. Rogers. All voted aye other than the recused and one who voted nay.

OTHER BUSINESS

Board of Adjustment Chair Nominations

Board of Adjustment Chair: John Schaffer (All voted AYE)

Board of Adjustment Vice Chair: John Struzick (2 voted AYE), Tim Norris (3 voted AYE);
Vote in favor of, new Vice Chair, Tim Norris.

Regular / Alternate Seat Appointments: Liliana Spears, John Struzick, Tim Norris, John Schaffer, Bill Burgin, Dennis Rogers, and Jayne Land.

ADJOURN 5:41 p.m.



John Schaffer, Chair

Sheighla Temple, Secretary